

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 702: 236

UNION TRUST COMPANY OF SAN FRANCISCO AND
ALBERT LACHMAN, AS EXECUTORS OF THE LAST
WILL AND TESTAMENT OF HENRIETTE S. LACH-
MAN, DECEASED, PLAINTIFFS IN ERROR,

vs.

JUSTUS S. WARDELL, UNITED STATES COLLECTOR OF
INTERNAL REVENUE FOR THE FIRST DISTRICT OF
CALIFORNIA, AND JOHN L. FLYNN, UNITED STATES
COLLECTOR OF INTERNAL REVENUE FOR THE FIRST
DISTRICT OF CALIFORNIA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF CALIFORNIA.

FILED FEBRUARY 23, 1921.

(28,119)

(28,119)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 762.

UNION TRUST COMPANY OF SAN FRANCISCO AND
ALBERT LACHMAN, AS EXECUTORS OF THE LAST
WILL AND TESTAMENT OF HENRIETTE S. LACH-
MAN, DECEASED, PLAINTIFFS IN ERROR,

vs.

JUSTUS S. WARDELL, UNITED STATES COLLECTOR OF
INTERNAL REVENUE FOR THE FIRST DISTRICT OF
CALIFORNIA, AND JOHN L. FLYNN, UNITED STATES
COLLECTOR OF INTERNAL REVENUE FOR THE FIRST
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1 In the United States District Court for the Northern District of California, Southern Division, Second Division.

No. 16220.

UNION TRUST COMPANY OF SAN FRANCISCO (a Corporation), and Albert Lachman, as Executors of the Last Will and Testament of Henriette S. Lachman, Deceased, Plaintiffs,

VS.

JUSTUS S. WARDELL, United States Collector of Internal Revenue for the First District of California, Defendant.

Amended Complaint.

Now comes the Union Trust Company of San Francisco (a corporation) and Albert Lachman, as executors of the last will and testament of Henriette S. Lachman, deceased, and by leave of court, first had and obtained, hereby amend their complaint filed on the 31st day of January, 1919, and file this their amended complaint against said defendant, and complaining of said defendant above named, allege:

I.

2 That said Union Trust Company of San Francisco is a corporation duly incorporated, organized and existing under the laws of the State of California, with its principal place of business in the City and County of San Francisco, State of California; that it is a trust company, and is authorized by its articles of incorporation and by the laws of said state to act as executor, administrator, guardian of estates, assignee, receiver, depository or trustee; that it has fully complied with all of the acts of the Legislature of said state relating to trust companies, and particularly with the provisions of the "Bank Act" so far as said act relates to trust companies; that the Superintendent of Banks of said state has issued to said Union Trust Company of San Francisco, under the provisions of said "Bank Act," his written certificate stating that it has complied with the provisions of said act and all the requirements of the law, and that it is authorized to transact within said state the business of a trust company, and that said certificate is in full force and effect.

II.

That the defendant above named is, and at all times herein mentioned since the 17th day of April, 1917 has been, the duly appointed, qualified and acting United States Collector of Internal Revenue for the First District of California.

III.

That on and prior to the 31st day of May, 1901, said Henriette S. Lachman was the owner of 7,475 shares of the capital stock of the S. & H. Lachman Estate (a corporation), represented by certificates numbers 11, 12 and 13, and in addition thereto was also the owner of 25 additional shares of stock of the same company represented by other certificates, and on said day the said Henriette S. Lachman made, executed and delivered a certain deed or declaration of trust by which she assigned, transferred and set over said 7,475 shares of stock to Albert Lachman and Henry Lachman, as trustees, and in trust to pay the income therefrom to the said Henriette S. Lachman during her life, and upon her death to deliver 2,490 shares thereof, represented by certificate No. 11 unto Henry Lachman, to be thenceforth held by him as his absolute property, and to deliver 2,495 shares thereof, represented by certificate No. 13, unto Albert Lachman, to be thenceforth held by him as his absolute property, and to deliver to Albert Lachman and Henry Lachman 2,490 shares, represented by certificate No. 12, in trust to pay the income derived therefrom unto Rebecca Metzger, wife of Leo Metzger and daughter of the said Henriette S. Lachman, and upon the death of the said daughter to hold the income and earnings derived from the said 2,490 shares, and expend the same according to their judgment for the benefit of the grandchildren of the said Henriette S. Lachman, and being the children of her said daughter, Rebecca Metzger, and the said trust instrument further provided that upon the youngest of said children attaining the age of majority all the then surviving children of the said daughter, Rebecca Metzger, should be immediately entitled to said 2,490 shares in equal proportions; the said deed or declaration of trust being in the words and figures following, to wit:

Alameda, Cal., May 31, 1901.

To Albert Lachman and Henry Lachman, my sons:

This is to certify that I have delivered to you seven thousand four hundred and seventy-five (7,475) shares of the capital stock of the S. & H. Lachman Estate, represented by certificates numbers eleven (11), twelve (12) and thirteen (13) respectively, however, upon the following trust:

To pay to me during my lifetime, all the income earned and derived therefrom, and, upon my death, to deliver two thousand four hundred and ninety (2,490) shares, represented by certificates number eleven (11) unto Henry Lachman, thenceforth for his absolute property; two thousand four hundred and ninety-five (2,495) shares, represented by certificate number thirteen (13) unto Albert Lachman, thenceforth for his absolute property; and yourselves, to-wit, Albert Lachman and Henry Lachman, to hold two thousand four

4 hundred and ninety (2,490) shares, represented by certificate number twelve (12) upon my death, in trust, paying the income derived therefrom unto my daughter, Rebecca, wife of Leo Metzger, and upon the death of my said daughter, the income and earnings derived from said two thousand four hundred and ninety (2,490) shares shall be held, or expended, by you, according to your judgment, for the benefit of my grandchildren, the children of my said daughter; Rebecca Metzger, and upon the youngest of said children attaining the age of majority, all the then surviving children of my said daughter, Rebecca Metzger, shall be immediately entitled to said two thousand four hundred and ninety (2,490) shares in equal proportions.

HENRIETTE LACHMAN.

At the time of the execution of said instrument, and at all times herein mentioned, the said Henriette S. Lachman was a resident of the State of California, and the said S. & H. Lachman Estate was at all times herein mentioned a corporation organized and existing under the laws of the State of California, and all the trustees and beneficiaries mentioned in said instrument were at all times herein mentioned likewise residents of the State of California, and the said instrument was made, executed and delivered in the State of California.

At the time of the execution of said instrument, the said Henriette S. Lachman was a widow, and on said date the only children of said Henriette S. Lachman were the said Henry Lachman, Albert Lachman and Rebecca Metzger, and she had no other children since that date.

IV.

Immediately upon the execution and delivery of the said deed or declaration of trust the said Henriette S. Lachman assigned, endorsed and delivered to the said trustees the said shares of stock, and they thereupon accepted said trust and became the owners of said 7,475 shares of stock upon the trusts therein specified and set forth, and the said beneficiaries thereupon became entitled to the several beneficial interests created in their favor by the said deed or declaration of trust, and the title to the said shares of stock thereupon vested in the said trustees upon the trusts therein set forth, and the said trustees and the survivor of them continued in the possession and enjoyment of the said shares of stock upon the trusts aforesaid, and administered the said trust in accordance with the said instrument creating the said trust and transferring said stock to them until the termination of said trust as hereinafter alleged.

V.

Thereafter and on the 10th day of July, 1915, the said Henry Lachman died, leaving a will bequeathing his estate to said Henri-

ette S. Lachman, and plaintiffs are informed and believe, and therefore allege, that the said 2,490 shares of said stock which were to go to the said Henry Lachman upon the death of the said Henriette S. Lachman under said deed or declaration of trust passed to her upon the death of said Henry Lachman, and later became a part of her estate as hereinafter alleged. But the said Albert Lachman, as surviving trustee, continued to own and hold all of the said stock upon the said trusts until the termination of said trust as herein-after alleged.

VI.

On the 13th day of July 1914, said Rebecca Metzger, one of the beneficiaries named in said deed or declaration of trust died, leaving three children, being grandchildren of said Henriette S. Lachman, namely, Elsa Metzger Davis, Vera Metzger Davis and Samuel Metzger, all of whom are still living, and the youngest thereof, to-wit: Samuel Metzger, attained the age of majority on September 19th, 1916. The said Elsa Metzger Davis and the said Vera Metzger Davis were daughters of said Rebecca Metzger and attained the age of majority on the following dates, to-wit: Elsa Metzger Davis on the 24th day of July, 1908, and Vera Metzger Davis on the 13th day of October, 1911.

All of the said children of Rebecca Metzger were living at the date of said instrument of May 31, 1901, and said Rebecca Metzger never had any other children.

VII.

Thereafter and on the 14th day of November, 1916, the said Henriette S. Lachman died, being at the time of her death a resident of the County of Alameda, State of California, and leaving a last will and testament by which she appointed the plaintiffs herein executors of the said will, and leaving a large amount of property, to-wit: property of the value of the sum of three hundred and two thousand, nine hundred sixty-three dollars and sixty-four cents (\$302,963.64), after deducting expenses of administration and other deductions allowed by the Federal Estate Tax Law hereinafter referred to, which property included the said 2,490 shares of said stock of the S. & H. Lachman Estate which passed to her upon the death of the said Henry Lachman, as aforesaid, and the 25 shares of stock in the same company mentioned in paragraph III hereof, but did not include the balance of the said shares of stock, to-wit: 4,985 shares thereof so transferred by the said Henriette S. Lachman on the 31st day of May, 1901, as aforesaid.

VIII.

That upon the death of the said Henriette S. Lachman the said surviving trustee delivered said 2,495 shares of said stock, represented by said certificate No. 13, to said Albert Lachman, and said 2,490 shares of said stock, represented by certificate No. 12, to the

7 said children of Rebecca Metzger, in accordance with the terms of said deed or declaration of trust, and thereupon said trust terminated and no part of said 4,985 shares of stock became part of the estate of said Henriette S. Lachman, deceased, nor did the same ever come into the possession of the executors of her last will and testament.

IX.

Thereafter and after due and regular proceedings had in the matter of the estate of the said Henriette S. Lachman, deceased, in the Superior Court of the County of Alameda, State of California, plaintiffs herein were duly appointed executors of the last will and testament of said Henriette S. Lachman, and thereafter and in due time the said plaintiffs duly notified the defendant of the death of the said Henriette S. Lachman and their appointment as such executors.

X.

Thereafter and in due time the said plaintiffs duly made and returned to the defendant herein a return for the federal estate tax on the estate of said decedent, setting forth therein all of the property of the said decedent and of her estate, including the said 2,490 shares of said stock of the S. & H. Lachman Estate which so passed to the said Henriette S. Lachman upon the death of the said Henry Lachman, and said 25 shares of stock in the same company above mentioned, but not including the balance of the shares of stock, to-wit: 4,985 shares thereof so transferred by the said Henriette S. Lachman on the 31st day of May, 1901, and which was not owned by the said decedent at the time of her death, or by her estate.

XI.

8 Notwithstanding the premises the Commissioner of Internal Revenue of the United States thereafter made a purported assessment of an estate tax against the estate of the said Henriette S. Lachman in assumed compliance with the provisions of the Act of Congress of September 8th, 1916, by which the said commissioner purported to assess against the said estate of Henriette S. Lachman an estate tax computed not only upon all of the property belonging to the said Henriette S. Lachman at the time of her death, including the 2,490 shares of stock of the said S. & H. Lachman Estate which so passed to her upon the death of the said Henry Lachman, and said 25 shares of stock of the same company as above referred to, but also upon the balance of the said shares of stock of the said S. & H. Lachman Estate, to-wit: 4,985 shares thereof so transferred by the said Henriette S. Lachman on the 31st day of May, 1901, and thereupon did compute, levy and assess an estate tax against the said estate amounting to the sum of twelve thousand, one hundred sixty-four dollars and seven cents (\$12,164.07); that of

the amount so assessed against the said estate \$4,545.50 thereof was so levied and assessed by the Commissioner of Internal Revenue upon the said 4,985 shares of stock so transferred by the said decedent on the 31st day of May, 1901, and so owned by the said trustees and beneficiaries, and which were not owned by the said decedent or her estate, but which were nevertheless assessed by the said commissioner at the value of \$113,638, and a tax assessed thereon amounting to the said sum of \$4,545.50. Of said sum of \$4,545.50, the sum of \$2,274.99 thereof was so computed upon the 2,495 shares of stock so belonging to Albert Lachman and (\$2,270.51) thereof was so computed upon the 2,490 shares of stock so belonging to the children of said Rebecca Metzger.

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XII.

Thereupon the defendant above named demanded payment of the said tax so assessed and the whole thereof, and in order to avoid the penalties prescribed by law, and in order to avoid a threatened seizure of the property of the said decedent, the said plaintiffs involuntarily, under coercion and under protest, paid the tax so assessed and demanded, and at the time of said payment delivered to the same defendant a written statement of the grounds of said protest in the words and figures following, to-wit:

San Francisco, Cal.,
November 19, 1918.

Hon. Justus S. Wardell,
Collector of Internal Revenue,
San Francisco, Cal.

SIR:

The undersigned, Union Trust Company of San Francisco and Albert Lachman, as executors of the last will of Henriette S. Lachman, deceased, hand to you herewith the sum of \$6,636.31 being the amount claimed by the United States of America as an additional tax (\$6,569.71) on the estate of said decedent, with interest thereon (\$66.60) from October 12, 1918, to the date hereof. Said sum of \$6,636.31 is paid to you in response to the notification and demand of the Commissioner of Internal Revenue of the United States and in response to a demand by you, and is paid involuntarily and under protest as to part of said demand, to-wit, \$4,545.50 thereof, and the interest thereon from October 12, 1918, at the rate of 10% per annum, for the purpose of avoiding the penalties prescribed by law and for the purpose of avoiding seizure and sale of any of the property of said estate.

The undersigned claim that said \$4,545.50 of said additional tax, and said interest thereon, are illegally exacted, and state the following as the reasons therefor and as the grounds of this protest:

1. Said \$4,545.50 of said additional tax is assessed and imposed upon 4,985 shares of the capital stock of S. & H. Lachman Estate, a corporation. On the 31st day of May, 1901, said shares of stock

10 were transferred and delivered by said decedent under a certain declaration of trust in writing made and executed by said decedent on said day to certain trustees named in said declaration. Said trustees accepted said trust on said day, and became the owners of said shares of stock upon the trusts set forth in said declaration of trust. Said trustees, and the survivor of them, continuously owned and held possession of said shares of stock, and continued in the discharge of their duties as said trustees until the termination of said trust, and the respective estates in said shares of stock created by said declaration of trust became vested property rights of the said trustees and of the beneficiaries named and designated in said declaration on said 31st day of May, 1901. None of said shares of stock was the property of said decedent at any time since said date. The said shares of stock are exclusive of the 2,515 shares of the stock of said S. & H. Lachman Estate enumerated in the return heretofore made and filed by the undersigned, and admitted to be part of the estate of said decedent.

2. The act of Congress, approved September 8, 1916, imposing the Federal estate tax, is not in terms or otherwise retroactive, and was not intended to and does not apply to any transaction whereby property was transferred, or whereby a trust in property was created prior to the date said Act became effective, nor to property rights or estates which became vested by transfer before the said Act became effective; and said Act cannot be construed to be retroactive or to apply to any such transaction or to such prior vested property rights or estates.

3. If the said act should be construed to be retroactive, or to be intended to apply to a transfer made before the passage of the said act, or to property rights and estates which became vested by transfer prior to the time that the said act became effective, the said act would be in violation of the Constitution of the United States in the following particulars:

(a) In that the same would take the property of the said trustees and of the beneficiaries under the said declaration of trust without due process of law in violation of the fifth amendment to the Constitution of the United States.

(b) In that the same would take private property, to-wit: the property of the said trustees and the beneficiaries under the said declaration of trust, for public use without just compensation in violation of the fifth amendment to the Constitution of the United States.

(c) In that if the said act applies or is construed to apply to a transfer made before the said act became effective, or to property rights and estates which vested before that time, the tax so imposed by the said act would not be a transfer tax or an indirect tax but would be a direct tax upon the property and the rights of property of the said trustees and beneficiaries under the said declaration of trust, and as a direct tax upon the said property and rights the same would be in violation of article I, section 9, subdivision 4,

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of the Constitution of the United States, because not laid in proportion to census or enumeration as therein provided.

4. In making the said transfer on the said 31st day of May, 1901, and in executing the said declaration of trust, dated May 31, 1901, the said decedent did not make a transfer of or create a trust with respect to any property in contemplation of, or intended to take effect in possession or enjoyment at or after her death, within the meaning of said Act of Congress.

The undersigned therefore ask and demand the refund of said \$4,545.50, and of the interest paid thereon.

UNION TRUST COMPANY OF SAN
FRANCISCO,

By PERCY A. WOOD,

Its Assistant Secretary;

ALBERT LACHMAN,

*As Executors of the Last Will of
Henriette S. Lachman, Deceased.*

XIII.

The said tax was so paid by the said plaintiffs on the 19th day of November, 1918, and thereafter and on the said 19th day of November, 1918, the said plaintiffs duly presented to the Commissioner of Internal Revenue of the United States their claim for a refund of the portion of the said tax so erroneously and illegally collected and paid under protest as aforesaid, which claim for refund was duly made upon the form and in accordance with the rules and regulations adopted by the Commissioner of Internal Revenue, and approved by the Secretary of the Treasury of the United States, and asked for the refund of the said sum of \$4,545.50 on the ground that the same was erroneously and illegally collected for the reasons set forth in said protest, all of which were set forth in said claim for refund,

and the said claim for refund was duly subscribed and sworn
12 to by the said plaintiffs in the manner provided by law.

XIV.

Thereafter and on the 7th day of December, 1918, the Commissioner of Internal Revenue acted upon the said claim for refund, and thereupon denied and refused the same, and refused to order the refunding of said amount, or any part thereof, and the whole thereof is still retained by the said defendant and no part thereof has been refunded or repaid to the plaintiffs.

XV.

That the transfer so made and the trust so created by the said Henriette S. Lachman on May 31st, 1901, were made and created long prior to the passage of the said Act of Congress of September 8th, 1916, and the rights of the said trustees and the said beneficiaries

in and to the said 4,985 shares of stock, represented by certificates numbers 12 and 13, then and there became vested property rights.

At the time of said transfer and the creation of said trust, there was no law of the State of California, imposing any transfer, inheritance or other tax upon such a transfer to lineal descendants of the grantor or trustor, whether or not the same was made in contemplation of death, or intended to take effect in possession or enjoyment by said beneficiaries at or after the death of the grantor or trustor, and it has been judicially determined and decided by the highest courts of the State of California that such a transfer, even if in contemplation of death or intended to take effect in possession or enjoyment at or after death, created vested property rights in said beneficiaries, and that no law passed thereafter could impose any transfer or inheritance tax upon such transfer, nor was there at that time any law of the United States imposing any transfer, inheritance or other tax upon such a transfer, except the War Revenue Act of 1898, which was repealed long before the death of said Henriette S. Lachman, and before any tax accrued thereunder.

But as a matter of fact, when the said transfer was made, the said Henriette S. Lachman was in good health and not in contemplation of death, and the said transfer was not made by her in contemplation of death, nor was it made for the purpose of avoiding any transfer or inheritance tax. That said grantor intended that the said transfer should take effect at once and in accordance with the legal effect of said transfer, and the said trustees immediately entered into possession and enjoyment of said property, and the said transfer or trust was not intended to take effect in possession or enjoyment only at or after the death of the said Henriette S. Lachman, but was intended to, and did, take effect in possession and enjoyment upon the date thereof. That as plaintiffs are informed and believe and therefore allege, the said Act of Congress should not be construed to be retroactive or to apply to a transfer or trust so made or created prior to the passage of said act, and -- it be construed as applying to such a transfer or trust, the same is in violation of the Constitution of the United States for the reasons set forth in the said protest *and* above set forth herein, and that for the reasons aforesaid the said assessment was made erroneously and illegally, and the said amount so exacted and retained by the defendant was exacted erroneously and illegally and without authority of law, and that thereby the said plaintiffs and the persons interested in the estate of the said Henriette S. Lachman, deceased, and the beneficiaries of said trust were deprived of their property without due process of law in violation of the Constitution of the United States.

14 And plaintiffs further allege that there is no constitutional authority for the tax so exacted as applied to the transaction and transfer above set forth and alleged, and plaintiffs hereby invoke the protection of the Constitution of the United States against taxation not authorized thereby, and against taxation forbidden thereby, and also invoke the protection of the provisions of the Constitution of the United States above referred to, all of which are violated by

making said tax applicable to said transfer or to any transfer made before the passage of said act.

XVI.

That the original complaint was filed herein by plaintiffs against defendant on the 21st day of January, 1918, and the summons therein was served on the defendant on the 1st day of February, 1919, and the defendant appeared herein on the 12th day of February, 1919.

Wherefore, plaintiffs pray judgment against the said defendant for the recovery of said sum of \$4,545.50, together with interest thereon from the 19th day of November, 1918.

ISAAC FROHMAN,

HELLER, POWERS & EHRLMAN,

Attorneys for Plaintiffs.

EDWARD F. TREADWELL,

Of Counsel.

15 STATE OF CALIFORNIA,

City and County of San Francisco, ss:

Albert Lachman, being first duly sworn, deposes and says: that he is one of the executors of the estate of Henriette S. Lachman, deceased; that he has read the foregoing amended complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated on information or belief, and as to such matters he believes it to be true.

ALBERT LACHMAN,

Subscribed and sworn to before me this 18th day of August, 1919.
[SEAL.]

W. H. PYBURN,

*Notary Public in and for the
City and County of San Francisco,
State of California*

Received a copy of the within this 18th day of August 1919.

ANNETTE ABBOTT ADAMS,

Attorney for Defendants.

Endorsed: Filed Aug. 18, 1919. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

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(Title of Court and Cause.)

Demurrer to Amended Complaint.

Now comes the defendant above named and demurring to the amended complaint of plaintiff on file herein for ground of demurrer shows:

I.

That said amended complaint does not state facts sufficient to constitute a cause of action against said defendant.

Wherefore, said defendant prays that he be hence dismissed with judgment for his costs incurred herein.

ANNETTE ABBOTT ADAMS,
United States Attorney.

FRANK M. SILVA,
*Asst. United States Attorney,
Attorneys for Defendant.*

Received a copy of the within this 27th day of August, 1919.

EDWARD F. TREADWELL.

Endorsed: Filed Aug. 27, 1919. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

- 17 At a Stated Term, to-wit, the November Term, A. D. 1920, of the Southern Division of the United States District Court for the Northern District of California, Section Division. Held at the Court-room in the City and County of San Francisco, on Thursday, the 6th Day of January, in the Year of our Lord One Thousand Nine Hundred and Twenty-one.

Present The Honorable William H. Hunt, Circuit Judge.

No. 16220.

UNION TRUST CO. OF S. F. ET AL.

vs.

JUSTUS S. WARDELL, Collector, etc.

(Order Sustaining Demurrer.)

Ordered that the memorandum opinion of Honorable Frank H. Rudkin, District Judge, herein, be filed, and that in accordance with said opinion the defendant's demurrer to amended complaint be and the same is hereby sustained.

- 18 (Title of Court and Cause.)

Judgment of Dismissal.

It appearing to the Court that plaintiffs have failed to amend their amended complaint within the time allowed by law after the sustaining of defendant's demurrer to the amended complaint; and the

Court having, upon motion of E. M. Leonard, Assistant United States Attorney, ordered that this cause be dismissed and that judgment be entered herein accordingly:

Now therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that plaintiffs take nothing by this action and that defendant go hereof without day.

Judgment entered January 13, 1921.

WALTER B. MALING,
Clerk.

19 In the United States District Court for the Northern District of California, Southern Division, Second Division,

No. 16220.

UNION TRUST COMPANY OF SAN FRANCISCO (a Corporation) and Albert Lachman, as Executors of the Last Will and Testament of Henriette S. Lachman, Deceased, Plaintiffs,

vs.

JUSTUS S. WARDELL, United States Collector of Internal Revenue for the First District of California, Defendant.

Notice of Motion for Substitution, etc.

To the Defendant in the above-entitled action to Messrs Frank M. Silva and D. M. Kelleher, his attorneys:

You and each of you will please take notice that on Monday, the 7th day of February, 1921, at the hour of ten o'clock a. m., or as soon thereafter as counsel can be heard at the courtroom of the above entitled court, the plaintiffs in the above entitled action will move said court for an order substituting John L. Flynn, United States Collector of Internal Revenue for the First District of California, as defendant in the place and stead of the defendant Justus S. Wardell, United States Collector of Internal Revenue for the First District of California, in so far as the said action is against the said Justus S. Wardell in his official capacity, and permitting the said action to also be continued and prosecuted against the said
20 Justus S. Wardell, United States Collector of Internal Revenue for the First District of California, so far as the said *against* is against him individually.

The said motion will be made upon the ground that since the commencement of the said action the said Justus S. Wardell has resigned as United States Collector of Internal Revenue for the First District of California, and the said John L. Flynn has since been appointed and is now the duly appointed, qualified and acting United States Collector of Internal Revenue for the First District of California, and that so far as the said action is against the said Justus S. Wardell

in his official capacity it is a proper case for the substitution of his successor, and so far as the said action is against the said Justus S. Wardell in his individual capacity it is proper that the same should be continued and prosecuted against him individually.

Dated February 2nd, 1921.

ISAAC FROHMAN,
HELLER, POWERS & EHRMAN,
Attorneys for Plaintiffs.

GARRET W. McENERNEY,
EDWARD F. TREADWELL,
Of Counsel for Plaintiffs.

- 21 Received a copy of the within notice of motion for substitution, etc., this 3rd day of February, 1921.

FRANK M. SILVA,
*United States Attorney,
Attorney for Defendant.*
E. M. LEONARD,
Asst. U. S. Atty.,
D. J. KELLEHER,
Of Counsel for Defendant.

Endorsed: Filed Feb. 3, 1921. W. B. Maling, clerk, by J. A. Schaetzer, deputy clerk.

- 22 In the United States District Court for the Northern District of California, Southern Division, Second Division.

No. 16220.

UNION TRUST COMPANY OF SAN FRANCISCO (a Corporation and Albert Lachman, as Executors of the Last Will and Testament of Henriette S. Lachman, Deceased, Plaintiffs,

VS.

JUSTUS S. WARDELL, United States Collector of Internal Revenue for the First District of California, Defendant.

(Order Substituting John L. Flynn as Collector, etc.)

In the above entitled action it appearing to the court that the above entitled action having been brought against Justus S. Wardell, United States Collector of Internal Revenue for the First District of California, and the said Justus S. Wardell having thereafter resigned as such collector and John L. Flynn having been duly appointed United States Collector of Internal Revenue for the First District of California to succeed the said Justus S. Wardell, and he having duly qualified, and it being uncertain as to whether this

is a proper case for the substitution of the said successor to the said defendant, Justus S. Wardell, or whether the said action should proceed against the said defendant, Justus S. Wardell, and it appearing to the court on motion of the plaintiffs that it is necessary for the survivor thereof to obtain a settlement of the questions involved;

Now, therefore, it is by the court ordered that so far as 23 the said action is against the said defendant, Justus S. Wardell, in his official capacity, the same may be maintained against his successor in office, to-wit: John L. Flynn, United States Collector of Internal Revenue for the First District of California, and that so far as the same is against said defendant, Justus S. Wardell, personally, the same may be continued against him, and that the said action may be hereafter maintained and prosecuted against the said Justus S. Wardell, United States Collector of Internal Revenue for the First District of California, and said John L. Flynn, United States Collector of Internal Revenue for the First District of California, without further pleadings or process.

Dated February 7th, 1921.

FRANK H. RUDKIN,
District Judge.

Endorsed: Filed Feb-7 1921. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

24 In the United States District Court for the Northern District of California, Southern Division, Second Division.

No. 16220.

UNION TRUST COMPANY OF SAN FRANCISCO (a Corporation and Albert Lachman, as Executors of the Last Will and Testament of Henriette S. Lachman, Deceased, Plaintiffs,

vs.

JUSTUS S. WARDELL, United States Collector of Internal Revenue for the First District of California, and John L. Flynn, United States Collector of Internal Revenue for the First District of California, Defendants.

Appearance of John L. Flynn, United States Collector of Internal Revenue for the First District of California.

Comes now John L. Flynn, United States Collector of Internal Revenue for the First District of California, substituted as defendant in the above entitled action in the place of Justus S. Wardell, United States Collector of Internal Revenue for the First District of California, insofar as the above entitled action is against the said Justus S. Wardell in his official capacity by an order of the above entitled court given, made and filed on the 7th day of February,

1621, and hereby appears in said action as such defendant by the undersigned, his attorneys,

FRANK M. SILVA,

E. M. L.

United States Attorney,

Attorney for Defendants;

D. M. KELLEHER,

Of Counsel for Defendants.

Endorsed: Filed Feb. 9 1921. W. M. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

25 In the District Court of the United States for the Northern District of California, Southern Division.

No. 16,220.

UNION TRUST COMPANY OF SAN FRANCISCO (a Corporation and Albert Lachman, as Executor of the Last Will and Testament of Henriette S. Lachman, Deceased, Plaintiffs,

vs.

JUSTUS S. WARDELL, United States Collector of Internal Revenue for the First District of California, Defendant.

Memorandum. Opinion.

Heller, Powers & Ehrman, Isaac Frohman, Edward F. Treadwell, John W. Preston and Garret W. McEnerney, Attorneys for Plaintiffs.

Annette Abbott Adams, United States Attorney, Chas. W. Thomas, Jr., Assistant United States Attorney, and D. M. Kelleher, Attorneys for Defendant.

RUDKIN, *District Judge:*

Section 201 of the Act of September 8, 1916 (39 Stat. 777), imposes a tax upon the transfer of the net estate of every decedent dying after the passage of the act, whether a resident or nonresident of the United States.

Section 202 provides:

"That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated:

* * *

"(b) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for a fair consideration in money or money's worth."

The value of the net estate is ascertained by making certain authorized deductions from the value of the gross estate.

On the 31st day of May, 1901, Henriette S. Lachman executed a declaration of trust under the terms of which she assigned 26 7,475 shares of the capital stock of the S. & H. Lachman estate, of which she was the owner, to her sons Albert Lachman and Henry Lachman, as trustees, to pay the income from the stock to her during her life, and upon her death to deliver the stock to certain relatives named in the trust deed. The grantor in the trust deed died on the 14th day of November, 1916, and the present suit was thereafter brought by her executors to recover the sum of \$4,545.50 paid as tax on the above transfer, under protest.

Counsel for plaintiffs contend that the act should not be so construed as to include transfers made prior to its passage, and that if it so construed the act is unconstitutional and void. Both of these questions were determined adversely to the plaintiffs by the Circuit Court of Appeals for the Eighth Circuit in Schwab, Executor, v. Doyle, not yet reported. In that case the transfer was made in contemplation of death, whereas in the present case the transfer was intended to take effect in possession or enjoyment at or after death, but manifestly the same rule of construction will apply to both provisions, and the same rule of constitutional validity. I entertain no doubt that the act was intended to operate retrospectively, and a contrary construction could only be justified on the principle that such a construction would render the act unconstitutional. On the question of constitutionality the decision of an appellate court should certainly raise a doubt as to the invalidity of the act in the mind of a trial court, and without further discussion the demurrer will be sustained.

Let an order be entered accordingly.

Endorsed: Filed January 6, 1921. Walter B. Maling, Clerk.

27 In the United States District Court for the Northern District of California, Southern Division, Second Division.

No. 16220.

UNION TRUST COMPANY OF SAN FRANCISCO (a Corporation and Albert Lachman, as Executors of the Last Will and Testament of Henriette S. Lachman, Deceased, Plaintiffs,

vs.

JUSTUS S. WARDELL, United States Collector of Internal Revenue for the First District of California, and John L. Flynn, United States Collector of Internal Revenue for the First District of California, Defendants.

To the Honorable the Judges of the United States District Court for the Northern District of California:

Now come the above named plaintiffs and file this, their petition for writ of error in the above entitled cause, and respectfully show:

I.

That on the 13th day of January, 1921, the said court made and entered its judgment in said cause in favor of defendant and against the plaintiffs.

II.

That the said case is a case that involves the construction of the Constitution of the United States.

III.

That the said case is a case that involves the application of the Constitution of the United States.

28

IV.

That the said case is a case in which the constitutionality of a law of the United States is drawn in question.

V.

That said case involves the constitutionality of the Federal Estate Tax Act, approved September 8, 1916, when applied retroactively to a transfer made before the passage of the said act and when applied to property rights and estates which became vested by transfer prior to the time that said act became effective, and when applied to the coming into possession of estates in remainder which had become fully vested in interest before said act became effective.

VI.

That this is a proper case to be reexamined, reversed or affirmed by the Supreme Court of the United States upon a writ of error, within the meaning of section 238 of the Judicial Code of the United States.

VII.

That in said judgment certain errors were committed to the prejudice of the plaintiffs, all of which will appear in detail from the assignment of errors which is filed with this petition.

Wherefore, plaintiffs pray that a writ of error in their behalf issue out of the Supreme Court of the United States directed to the United States District Court for the Northern District of California, and that said plaintiffs be allowed to prosecute the same in said Supreme Court of the United States for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers in said cause, duly authenticated, may be forwarded to the

Supreme Court of the United States, and that an order be made
 29 fixing the amount of the supersedeas bond which said plain-
 tiffs shall give and furnish on said writ of error, and that
 upon the giving of said bond all further proceedings be sus-
 pended, stayed and superseded until the determination of said writ
 of error by the Supreme Court of the United States.

ISAAC FROHMAN,
 HELLER, POWERS & EHRMAN,
Attorneys for Plaintiffs.

GARRET W. McENERNEY,
 EDWARD F. TREADWELL,
Of Counsel for Plaintiffs.

Endorsed: Filed Feb. 15, 1921. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

30 In the United States District Court for the Northern District
 of California, Southern Division, Second Division.

No. 16220.

UNION TRUST COMPANY OF SAN FRANCISCO (a Corporation) and
 Albert Lachman, as Executors of the Last Will and Testament of
 Henriette S. Lachman, Deceased, Plaintiffs,

vs.

JUSTUS S. WARDELL, United States Collector of Internal Revenue for
 the First District of California, and John L. Flynn, United States
 Collector of Internal Revenue for the First District of California,
 Defendants.

Assignment of Errors.

Now come the plaintiffs in the above entitled cause, and, in con-
 nection with their petition for writ of error in the above entitled cause,
 make the following assignment of errors which they aver occurred in
 said cause, and upon which they will urge their writ of error in the
 above entitled cause, to-wit:

I.

The court erred in holding that the Federal Estate Tax Act, ap-
 proved September 8, 1916, applies to the transfer alleged in the com-
 plaint, or applies to a transfer made prior to the passage of the said
 act, or applies to trusts in property created prior to the date said
 act became effective, or applies to property rights or estates which
 became vested by transfer before said act became effective.

31

II.

The court erred in holding that the said act imposes a tax on the coming into possession of estates in remainder which were fully vested in interest prior to the passage of the said act.

III.

The court erred in holding that the said act should be construed to be retroactive, or to apply to any such transfer or to any such prior vested property rights or estates.

IV.

The court erred in holding that if the said act should be construed to be retroactive, or to be intended to be applied to a transfer made before the passage of the said act, or to property rights and estates which became vested by transfer prior to the time that the said act became effective, the said act would not be in violation of the Constitution of the United States.

V.

The court erred in holding that if the said act were so construed and applied it would not be in violation of the Constitution of the United States, in that the same would take the property of the said trustees and of the beneficiaries under the said declaration of trust without due process of law, in violation of the fifth amendment to the Constitution of the United States.

VI.

The court erred in holding that if the said act should be so construed and applied it would not be in violation of the Constitution of the United States, in that the same would take private property, to-wit: the property of the said trustees and the said beneficiaries under the said declaration of trust, for a public use without just compensation, in violation of the fifth amendment to the Constitution of the United States.

32

VII.

The court erred in holding that if the said act should be so construed and applied it would not be in violation of the Constitution of the United States, in that the tax so imposed by the said act would not be a transfer tax or an indirect tax but would be a direct tax upon the property and the rights of property of the said trustees and beneficiaries under the said declaration of trust, and as a direct tax upon the said property and rights the same would be in violation of article I, section 9, subdivision 4, of the Constitution of the United States.

because not laid in proportion to census or enumeration as therein provided.

VIII.

The court erred in holding that if the said act should be so construed and applied it would not be in violation of the Constitution of the United States, in that the tax so imposed produces such gross and patent inequality as to be entirely beyond the scope of the taxing power of Congress, and to transcend the legitimate exercise of the functions of government.

IX.

The court erred in holding that in making the said transfer on the said 31st day of May, 1901, and in executing the said declaration of trust, dated May 31st, 1901, the said decedent made a transfer of or created a trust with respect to any property in contemplation of or intended to take effect in possession or enjoyment at or after her death within the meaning of said Act of Congress.

X.

33 The court erred in holding that the said properties so transferred on the 31st day of May, 1901, did not become vested property rights of the said trustees and beneficiaries upon the execution of said declaration of trust on the 31st day of May, 1901, and long prior to the passage of the said act.

XI.

The court erred in holding that the said shares of stock so transferred on the 31st day of May, 1901, were a part of the gross estate of the said Henriette S. Lachman, within the meaning of the said act, and in holding that the same were subject to taxes thereunder.

XII.

The court erred in sustaining the demurrer of the defendant to the plaintiffs' amended complaint.

XIII.

The court erred in rendering judgment in favor of defendant and against the plaintiffs.

Wherefore, said plaintiffs pray that the judgment of said court be reversed.

ISAAC FROHMAN,
HELLER, POWERS & EHRMAN,
Attorneys for Plaintiffs.

GARRET W. McENERNEY,
EDWARD F. TREADWELL,
Of Counsel for Plaintiffs.

Endorsed: Filed Feb. 15, 1921. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

34 In the United States District Court for the Northern District of California, Southern Division, Second Division.

No. 16220.

UNION TRUST COMPANY OF SAN FRANCISCO (a Corporation) and Albert Lachman, as Executors of the Last Will and Testament of Henriette S. Lachman, Deceased, Plaintiffs,

VS.

JUSTUS S. WARDELL, United States Collector of Internal Revenue for the First District of California, and John L. Flynn, United States Collector of Internal Revenue for the First District of California, Defendants.

Order Allowing Writ of Error and Fixing Amount of Supersedeas Bond.

On this 15th day of February, 1921, came the plaintiffs by their attorneys, and filed herein and presented their petition praying for the allowance of a writ of error and an assignment of errors intended to be urged by them, and praying also that a transcript of the record, proceedings and papers, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as are proper in the premises.

And it appearing that on the 13th day of January, 1921, the final judgment was entered in this cause in favor of defendant and against the plaintiffs, and that the said case is a case that involves the construction of the Constitution of the United States, and is a case that involves the application of the Constitution of the United States, and

35 is a case in which the constitutionality of a law of the United States is drawn in question, and is a case in which the constitutionality of the Federal Estate Tax Act of September 8, 1916, when retroactively applied to a transfer made before the passage of said act and when applied to property rights and estates which became vested by transfer prior to the time that said act became effective, and when applied to the coming into possession of estates in remainder which had become fully vested in interest before said act became effective, is drawn in question, and that said case is a proper case to be re-examined, reversed or affirmed by the Supreme Court of the United States upon a writ of error, within the meaning of section 238 of the Judicial Code of the United States.

In consideration whereof, it is hereby ordered that a writ of error, as prayed for in said petition, be allowed and that the amount of the supersedeas bond to be given by the plaintiff upon said writ of error be, and the same is hereby, fixed at the sum of five hundred (\$500), and that upon the giving of said bond all further proceedings in said

cause be suspended, stayed and superseded pending the determination of said writ of error by the Supreme Court of the United States.

Dated this 15th day of February, 1921.

FRANK H. RUDKIN,
District Judge.

Endorsed: Filed Feb. 15, 1921. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

36 In the United States District Court for the Northern District of California, Southern Division, Second Division.

No. 16220.

UNION TRUST COMPANY OF SAN FRANCISCO (a Corporation) and Albert Lachman, as Executors of the Last Will and Testament of Henriette S. Lachman, Deceased, Plaintiffs,

vs.

JUSTUS S. WARDELL, United States Collector of Internal Revenue for the First District of California, and John L. Flynn, United States Collector of Internal Revenue for the First District of California, Defendants,

Bond on Writ of Error.

Know all men by these presents, that Union Trust Company of San Francisco (a corporation) and Albert Lachman, as executors of the last will and testament of Henriette S. Lachman, deceased, as principals, and W. H. Trump and W. S. Mitchell, as sureties, are held and firmly bound unto Justus S. Wardell, United States Collector of Internal Revenue for the First District of California, and John L. Flynn, United States Collector of Internal Revenue for the First District of California, in the full and just sum of five hundred dollars (\$500), to be paid to the said Justus S. Wardell, United States Collector of Internal Revenue for the First District of California, and John L. Flynn, United States Collector of Internal Revenue for the First District of California, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents:

37 Sealed with our seals and dated this 14th day of February in the year of our Lord, one thousand nine hundred and twenty-one.

Whereas, lately in the District Court of the United States for the Northern District of California, in a suit pending in said court between Union Trust Company of San Francisco (a corporation) and Albert Lachman, as executors of the last will and testament of Henriette S. Lachman, deceased, plaintiffs, and Justus S. Wardell, United States Collector of Internal Revenue for the First District of

California, defendant, a judgment was rendered against the said plaintiffs, and said plaintiffs have sued out a writ of error from the Supreme Court of the United States to the District Court of the United States for the Northern District of California to reverse the judgment in the aforesaid suit, and a citation directed to the said defendants citing and admonishing them to be and appear at a session of the Supreme Court of the United States to be held in the City of Washington, District of Columbia, within sixty days after the service of said citation.

Now, the condition of the above obligation is such, that if the said plaintiffs shall prosecute said writ of error to effect, and answer all damages and costs if they shall fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

In witness whereof, the parties herein named as principals and sureties have caused these presents to be executed this 14th day of February, 1921.

[SEAL.]

UNION TRUST COMPANY OF SAN FRANCISCO,

By L. E. GREENE, *Vice President*,

By F. H. ALT, *Secretary*,

As Executors of the Last Will and Testament of Henriette S. Lachman, Deceased;

ALBERT LACHMAN, *As Principals*,

W. H. TRUMP,

W. S. MITCHELL,

As Sureties.

38 STATE OF CALIFORNIA,

City and County of San Francisco, ss:

W. H. Trump and W. S. Mitchell being first duly sworn, each for himself deposes and says: that he is a resident and householder within the State of California, and is worth the sum specified in the foregoing undertaking, over and above all of his just debts and liabilities, exclusive of property exempt from execution.

W. H. TRUMP

W. S. MITCHELL.

Subscribed and sworn to before me this 14th day of February, 1921.

[SEAL.]

JAMES MASON,

Notary Public in and for the City and County of San Francisco, State of California.

The foregoing bond is hereby approved this 15th day of February, 1921.

FRANK H. RUDKIN,

District Judge.

Endorsed: Filed Feb. 15, 1921. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

39 In the United States District Court for the Northern District of California, Southern Division, Second Division.

No. 16220.

UNION TRUST COMPANY OF SAN FRANCISCO (a Corporation), and Albert Lachman, as Executors of the Last Will and Testament of Henriette S. Lachman, Deceased, Plaintiffs,

vs.

JUTUS S. WARDELL, United States Collector of Internal Revenue for the First District of California, and John L. Flynn, United States Collector of Internal Revenue for the First District of California, Defendants.

Præcipe for Record on Writ of Error.

To the clerk of the above entitled court:

You are hereby requested to forthwith prepare transcript of the record on writ of error in the above entitled cause, and that you include in said transcript the following documents, to wit:

1. Amended complaint.
2. Demurrer to amended complaint.
3. Order sustaining demurrer.
4. Judgment.
5. Notice of motion for substitution of John L. Flynn, United States Collector of Internal Revenue for the First District of California.
6. Order of substitution of John L. Flynn, United States Collector of Internal Revenue for the First District of California.
7. Appearance of John L. Flynn, United States Collector of Internal Revenue for the First District of California.
8. Petition for writ of error.
9. Assignment of errors.
10. Bond on writ of error.
11. Order allowing writ of error and fixing amount of supersedeas bond.
12. Writ of error.
13. Citation.

Dated: February 16th, 1921.

ISAAC FROHMAN,
HELLER, POWERS & EHRMAN,

Attorneys for Plaintiffs.

EDWARD F. TREADWELL,
GARRET W. McENERNEY,

Of Counsel for Plaintiffs.

Endorsed: Filed Feb. 17, 1921. W. B. Maling, Clerk, by J. A. Schaertzer, Deputy Clerk.

40 In the Southern Division of the United States District Court
in and for the Northern District of California, Second
Division.

No. 16220.

UNION TRUST COMPANY OF SAN FRANCISCO, a Corporation, et al.,
Plaintiffs,

vs.

JUSTUS S. WARDELL, United States Collector of Internal Revenue for
the First District of California, and John L. Flynn, United States
Collector of Internal Revenue for the First District of California,
Defendants.

Clerk's Certificate to Record on Writ of Error.

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify the foregoing thirty-nine (39) pages, numbered from 1 to 39, inclusive, to be full, true and correct copies of the record and proceedings as enumerated in the praecipe for record on writ of error, as the same remain on file and of record in the above-entitled cause, in the office of the clerk of said Court, and that the same constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing return to writ of error is \$17.00; that said amount was paid by the plaintiffs, and that the original writ of error and citation issued in said cause are hereto annexed.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court this 21st day of February, A. D. 1921.

[Seal of the U. S. District Court, Northern Dist. of California.]

WALTER B. MALING,
*Clerk United States District Court
for the Northern District of California.*

41 In the United States District Court for the Northern District of California, Southern Division, Second Division.

No. 16220.

UNION TRUST COMPANY OF SAN FRANCISCO (a Corporation), and Albert Lachman, as Executors of the Last Will and Testament of Henriette S. Lachman, Deceased, Plaintiffs,

vs.

JUSTUS S. WARDELL, United States Collector of Internal Revenue for the First District of California, and John L. Flynn, United States Collector of Internal Revenue for the First District of California, Defendants.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the District Court of the United States for the Northern District of California, Greeting:

Because in the record and proceedings, as well as in the rendition of the judgment of a plea which is in the District Court of the United States for the Northern District of California, before you, or some of you, between Union Trust Company of San Francisco (a corporation) and Albert Lachman, as executors of the last will and testament of Henriette S. Lachman, deceased, plaintiffs, and Justus S. Wardell, United States Collector of Internal Revenue for the First District of California, and John L. Flynn, United States Collector of

42 Internal Revenue for the First District of California, defendants, being a case that involves the construction and application of the Constitution of the United States, and being a case in which the constitutionality of a law of the United States is drawn in question, a manifest error hath happened to the great damage of plaintiffs, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the Supreme Court at Washington, within sixty days from the date hereof that the record and proceedings aforesaid being inspected, the said supreme court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of United States, should be done.

Witness, the Hon. Edward D. White, Chief Justice of the United States, the 15th day of February, in the year of our Lord one thousand nine hundred and twenty-one.

[Seal of the U. S. District Court, Northern Dist. of California.]

WALTER B. MALING,
*Clerk of the United States District Court
for the Northern District of California.*
By J. A. SCHAEERTZER,
Deputy Clerk.

Allowed by:

FRANK H. RUDKIN,
United States District Judge.

13 I, Walter B. Maling, Clerk of the United States District Court for the Northern District of California, Southern Division, Second Division, do hereby certify that plaintiffs in error in the within entitled action have on the 17th day of February, 1921, deposited with me one copy of the within Writ of Error for each of the defendants in said action.

Witness my hand and the seal of said court this 17th day of February, 1921.

[Seal of the U. S. District Court, Northern Dist. of California.]

WALTER B. MALING,
*Clerk of the United States District Court
for the Northern District of California.*
By J. A. SCHAEERTZER,
Deputy Clerk.

13¹ [Endorsed:] No. 16220. In the United States Court for the Northern District of California, Southern Division, Second Division, Union Trust Company of San Francisco (a corporation), et al., Plaintiffs, vs. Justus S. Wardell, etc., et al., Defendants. Writ of Error. Filed Feb. 17, 1921. W. B. Maling, Clerk, by J. A. Schaeertz, Deputy Clerk. Edward F. Treadwell, Attorney-at-Law, 1323 Merchants Exchange Building, San Francisco, California.

44 *Return to Writ of Error.*

The answer of the Judge of the District Court of the United States, in and for the Northern District of California, Second Division.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under

the seal of our said Court, to the Supreme Court of the United States, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

[Seal of the U. S. District Court, Northern Dist. of California.]

WALTER B. MALING,
*Clerk United States District Court,
Northern District of California.*

- 45 In the United States District Court for the Northern District of California, Southern Division, Second Division.

No. 16220.

UNION TRUST COMPANY OF SAN FRANCISCO (a Corporation), and Albert Lachman, as Executors of the Last Will and Testament of Henriette S. Lachman, Deceased, Plaintiffs.

VS.

JUSTUS S. WARDELL, United States Collector of Internal Revenue for the First District of California, and John L. Flynn, United States Collector of Internal Revenue for the First District of California, Defendants.

Citation.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to Justus S. Wardell, United States Collector of Internal Revenue for the First District of California, and John L. Flynn, United States Collector of Internal Revenue for the First District of California, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, to be held at the City of Washington, District of Columbia, on the 15th day of April, 1921, pursuant to a writ of error on file in the clerk's office of the District Court of the United States for the Northern District of California, in that certain action, No. 16220, wherein Union Trust Company of San Francisco (a corporation) and Albert Lachman, as executors of the last will and testament of Henriette S. Lachman, deceased, are plaintiffs in error, and you, Justus S. Wardell, United States Collector of Internal Revenue for the First District of California, and John L. Flynn, United States Collector of Internal Revenue for the First District of California, are defendants in error, to show cause, if any there be, why the judgment given, made and entered against the said plaintiffs in error in said writ of error mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness, the Judges of the District Court of the United States for the Northern District of California, this 15th day of February, in the year of our Lord one thousand nine hundred and twenty-one.

FRANK H. RUDKIN,
District Judge.

Attest:

[Seal of the U. S. District Court, Northern Dist. of California.]

WALTER B. MALING,
*Clerk of the United States District Court
for the Northern District of California.*

By J. A. SCHAERTZER,
Deputy Clerk.

47 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Forrest A. Cobb, being first duly sworn, deposes and says: That he is a citizen of the United States and over the age of twenty-one years, and not a party to the within entitled action; that on the 17th day of February, 1921, he personally served the within citation upon Frank M. Silva, United States District Attorney for the Northern District of California, by exhibiting the within original citation to the said Frank M. Silva, as such United States District Attorney, and by delivering to him a copy of the same; that the said Frank M. Silva as such United States District Attorney for the Northern District of California is the attorney of record in the within entitled action for each of the defendants named therein.

FORREST A. COBB.

Subscribed and sworn to before me this 17th day of February, 1921.

[Seal of James Mason, Notary Public, City and County of San Francisco, Cal.]

JAMES MASON,
*Notary Public in and for the City and County
of San Francisco, State of California.*

48 [Endorsed.] No. 16220. In the United States District Court for the Northern District of California, Southern Division, Second Division. Union Trust Company of San Francisco (a Corporation), et al., Plaintiffs, vs. Justus S. Wardell, etc., et al., Defendants. Citation. Filed Feb. 17, 1921. W. B. Maling, Clerk, by J. A. Schaeitzer, Deputy Clerk. Edward F. Treadwell, Attorney-at-law, 1323 Merchants Exchange Building, San Francisco, California.

Endorsed on cover: File No. 28,119. N. California D. C., U. S. Term No. 762. Union Trust Company of San Francisco and Albert Lachman, as executors of the last will and testament of Henriette S. Lachman, deceased, plaintiffs in error, vs. Justus S. Wardell, United States Collector of Internal Revenue for the First District of California, and John L. Flynn, United States Collector of Internal Revenue for the First District of California. Filed February 28th, 1921. File No. 28,119.

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